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06 UNITED STATES DISTRICT COURT
07 WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

08 STATE OF WASHINGTON, DEPT.) CASE NO. C07-0128-JCC
09 OF SOCIAL AND HEALTH SERVICES,)
Plaintiff,)
10 v.) REPORT AND RECOMMENDATION
11) RE: DEFENDANT’S MOTION TO
MICHAEL J. ASTRUE,) DISMISS
12 Commissioner of Social Security,)
13 Defendant.)
14

15 **INTRODUCTION**

16 Plaintiff State of Washington, Department of Social and Health Services (the State) seeks
17 judicial review of the denial of Janis G. Parker’s application for Supplemental Security Income
18 (SSI) benefits as a party in interest. (*See* Dkt. 1.) In response, the Commissioner of the Social
19 Security Administration (Commissioner) moves the Court for a dismissal of the State’s complaint
20 pursuant to Federal Rule of Civil Procedure 12(b)(6). (*See* Dkt. 8.) For the reasons described
21 below, the Court finds that defendant’s motion should be granted and this case dismissed.

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01 **FACTS AND PROCEDURAL HISTORY**

02 Janis Parker filed an application for SSI benefits on September 30, 2002. (Dkt. 1, Ex. B.)
 03 Her claim was denied at the initial and reconsideration levels, and she timely requested a hearing.
 04 (*Id.*) While awaiting a hearing date, Ms. Parker died on January 27, 2005. (*Id.*) On March 4,
 05 2005, counsel for plaintiff mailed a “Notice of Substitution of Party Upon Death of Claimant”
 06 attempting to substitute the State as a party in interest regarding Ms. Parker’s claim. (Dkt. 1, Ex.
 07 C.)

08 On March 16, 2005, Administrative Law Judge (ALJ) M. J. Adams held a hearing, taking
 09 testimony from Jeanette Parker, Janis Parker’s mother, and vocational expert Roni Beall. (*Id.*, Ex.
 10 B.) Ms. Parker and the State were represented by counsel, who was also present at the hearing.
 11 (*Id.*) On June 4, 2005, the ALJ issued a decision denying Ms. Parker’s claim. (*Id.*)

12 The State timely appealed. (*Id.* at 3.) On December 1, 2002, the Appeals Counsel
 13 dismissed the request for review because the State was not a proper party. (*Id.*) The State filed
 14 a complaint in this Court on January 26, 2007, asserting that it is the proper party and that it has
 15 been adversely affected by the hearing decision. (*Id.* at 1-4.) The Commissioner moves the Court
 16 for a dismissal of the State’s complaint, alleging the State has failed to state a claim upon which
 17 relief can be granted. (*See* Dkt. 8.)

18 **DISCUSSION**

19 The Commissioner argues that Ms. Parker’s death left no person or party eligible to
 20 receive benefits in her name under Title XVI of the Social Security Act.¹ F u r t h e r , t h e

21
 22 ¹ In support of this argument, the Commissioner cites a regulation pertaining to underpayments of benefits and argues that the only eligible recipient for such underpayments

01 Commissioner points out that there is no provision in the regulations that gives the State standing
02 to appeal Ms. Parker's claim. The Commissioner specifically points to 20 C.F.R. §
03 416.1471(b)(2), alleging that, under this regulation, the claimant must have requested review prior
04 to her death. The Commissioner also points to 20 C.F.R. § 416.1906, arguing that because the
05 regulation defines "you" as "someone who has applied for or is already receiving SSI benefits,"
06 Ms. Parker is the only person who has the right to appeal the final determination of the ALJ.
07 Finally, the Commissioner cites the Social Security Administration (SSA) Program Operations
08 Manual System (POMS) SI 04050.010(C)(7), titled "Interim Assistance Reimbursement (IAR)
09 Cases - Death of the Claimant," which states:

10 It is SSA's policy that the State is never a party to the claim, because the State's
11 interest depends solely on a favorable determination appellant has pursued [on] his or
12 her claim. If the claimant receives a determination of ineligibility, the State will not
13 receive any reimbursement unless the claimant appeals and the determination is
14 changed. If the individual receives a favorable determination, but the amount of the
15 initial payment is not at least equal to the amount that the State has paid to the
16 claimant, the State will receive only a partial reimbursement. If the claimant fails to
17 file an administrative appeal after receiving an unfavorable determination, the State
18 cannot file an appeal on the appellant's behalf and cannot require the appellant to file
19 an appeal or a Court action. In that case the State will not receive any
20 reimbursement. If the claimant/appellant dies during the administrative appeal
21 process, and the State asks to be substituted in place of the claimant to pursue the
22 appeal, that request must be denied.

17 In response, the State argues that the Commissioner's Motion to Dismiss should be denied
18 because the State is a proper party to the case and was, in fact, duly substituted as the proper party
19 prior to the ALJ hearing; because the State has an inherent and statutory right as a party to the

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21 would be a qualifying spouse. See 20 C.F.R. §§ 416.542(b). However, in so doing, the
22 Commissioner ignores the implications of the IAR. See 20 C.F.R. § 416.1910(a) ("Repayment
to the State takes priority over any underpayments due you (see §§416.525 and 416.542)").
Moreover, the issue of underpayments only becomes relevant upon an award of benefits.

01 hearing to request review of the unfavorable ALJ decision; because the State has a vested right
02 to receive reimbursement for interim assistance paid to the decedent Ms. Parker, which did not
03 expire with her death; and because the Appeals Council's dismissal of the request for review raises
04 colorable constitutional claims. (*See* Dkt. 10.) However, for the reasons discussed below,
05 the State's arguments fail.

06 Party Substitution in the ALJ Hearing

07 The State argues that the Appeals Council failed to state a legitimate basis for dismissing
08 its request for review. The State points to 20 C.F.R. § 416.1432, arguing that it is a proper party
09 to the hearing because it provided proper written notice to the Commissioner that its rights could
10 be adversely affected by the ALJ decision because of the IAR and submitted a proper notice of
11 substitution to the ALJ. The State points out that the ALJ noted these facts and asserts that the
12 ALJ properly substituted the State as the party in interest in this case.

13 The State's arguments lack merit.² First, procedurally, it is not correct to state that the
14 State was substituted for Ms. Parker as plaintiff. The State simply mailed a "Notice of
15 Substitution of Party Upon Death of Claimant" to the ALJ before the hearing. (Dkt. 1, Ex. C.)
16 It is true that the ALJ noted in her decision: "On February 28, 2005, DSHS was substituted as the
17 party in interest in regard to Ms. Parker's SSI claim so that the state of Washington could recover
18 GAU benefits (11B)." (*Id.*, Ex. B.) However, the ALJ did not make any formal findings
19 accepting this substitution and her decision was made "[i]n the Case of Janis G. Parker
20

21 ² The State also argues that, akin to a substituted party pursuant to Federal Rule of Civil
22 Procedure 25, it has all the rights that the claimant had. However, "[i]t is plain . . . that Rule 25
(a)(1) applies only to the substitution of legal representatives." *Mallonee v. Fahey*, 200 F.2d 918,
919 (9th Cir. 1952).

01 (Deceased)[.]” (*Id.*)

02 Secondly, there is no basis for concluding that the State is ever qualified to become a party
03 to the hearing. The statutory provisions governing SSI claims refer to only “an eligible individual
04 or eligible spouse” as the “individual[s]” who may request a hearing. 42 U.S.C. § 1383(c)(1)
05 (“The Commissioner . . . shall provide reasonable notice and opportunity for a hearing to any
06 individual who is or claims to be an eligible individual or eligible spouse and is in disagreement
07 with any determination under this subchapter with respect to eligibility of such individual for
08 benefits . . . if such individual requests a hearing on the matter in disagreement within sixty days
09 after notice of such determination is received, and, if a hearing is held, shall, on the basis of
10 evidence adduced at the hearing affirm, modify, or reverse the Commissioner’s findings of fact and
11 such decision”). The regulation cited by plaintiff, 20 C.F.R. § 416.1432, explains that, in addition
12 to the claimant, “*a person* who shows in writing that *his or her* rights may be adversely affected
13 by the decision may request a hearing” and “the other parties to the initial, reconsidered, or revised
14 determination, and *any other person* who shows in writing that his or her rights may be adversely
15 affected by the hearing, are parties to the hearing.” *See* 20 C.F.R. § 416.1432 (emphasis added).
16 Clearly, this language – pointing to “individuals” and “persons” – does not reflect a role for the
17 state as a party. *Cf. Crawford & Co. v. Apfel*, 235 F.3d 1298, 1305 (11th Cir. 2000) (stating with
18 respect to the statutory provisions governing Disability Insurance benefit claims: “Under the Act,
19 the statutory provisions governing hearings in disability cases contemplate participation by only
20 individuals with a stake in obtaining benefits. The statute speaks in terms of ‘individuals applying
21 for a payment,’ ‘his or her rights,’ ‘such individual or upon request by a wife, divorced wife,
22 widow....’”; finding it clear that corporate entities were “not the individuals or specified persons

01 enumerated by the Act or regulations”) (quoting 42 U.S.C. § 405(b)(1)).

02 Here, the ALJ was required to hold the hearing only because Ms. Parker properly
 03 requested the hearing prior to her death. The ALJ could not dismiss her request after her death
 04 because of the existence of the IAR. *See* 20 C.F.R. § 416.1457(4) (providing that an ALJ may
 05 dismiss a request for a hearing when “you die, there are no other parties, and we have no
 06 information to show that you may have a survivor who may be paid benefits due to you under
 07 §416.542(b) and who wishes to pursue the request for hearing, or that you authorized interim
 08 assistance reimbursement to a State pursuant to section 1631(g) of the Act”). However, it does
 09 not follow that the IAR gives the State a right to become a party to the hearing. Instead, the
 10 regulations simply allow for the possibility that the State may be compensated under an IAR
 11 agreement where a claimant properly requested a hearing and that hearing results in an award of
 12 benefits. *See* POMS SI 04050.010(C)(7) (“[T]he State’s interest depends solely on a favorable
 13 determination appellant has pursued [on] his or her claim”).³ Accordingly, for all of these reasons,
 14 the State fails to establish its status as a substituted party to the ALJ hearing.

15 Requesting Appeals Council Review

16 The regulation governing Appeals Council Review provides:

17 If you or any other party is dissatisfied with the hearing decision or with the dismissal
 18 of a hearing request, *you* may request that the Appeals Council review that action.
 19 The Appeals Council may deny or dismiss the request for review, or it may grant the
 request and either issue a decision or remand the case to an administrative law judge.

20 ³ While plaintiff correctly points out that “[t]he POMS does not have the force of law, .
 21 . . it is persuasive authority.” *Warre v. Comm’r of the Soc. Sec. Admin.*, 439 F.3d 1001, 1005 (9th
 22 Cir. 2006). Here, the relevant POMS provision clearly states that “[i]f the claimant/appellant dies
 during the administrative appeal process, and the State asks to be substituted in place of the
 claimant to pursue the appeal, that request must be denied.” POMS SI 04050.010(C)(7).

01 The Appeals Council shall notify the parties at their last known address of the action
02 it takes.

03 20 C.F.R. § 416.1467 (emphasis added). 20 C.F.R. § 416.1468 further explains how “you”
04 request the Appeals Council review and how “you or any party to a hearing decision” request an
05 extension of time to request review. As such, it is clear that only the claimant, or another viable
06 party to the ALJ hearing, may request the Appeals Council review. As discussed above, since the
07 State was not and could not be a party to the ALJ hearing, it had no right to request the Appeals
08 Council review.

09 The State cites 20 C.F.R. § 416.1471(b) – which provides that the Appeals Council may
10 dismiss a request for review if “you die, there are no other parties, and we have no information to
11 show that you may have a survivor who may be paid benefits due to you under §416.542(b) and
12 who wishes to pursue the request for review, or that you authorized interim assistance
13 reimbursement to a State pursuant to section 1631(g) of the Act” – to support its proposition that,
14 because of the existence of the IAR, the Appeals Council could not dismiss its request for review.
15 However, in this case, since there was no valid request for review from the claimant or any party
16 to the hearing, this provision simply does not apply.⁴ Therefore, the Appeals Council properly
17 dismissed the State’s request for review because the State was not a party who could appeal the
18 ALJ’s decision. (*See* Dkt. 1, Ex. A.)

21 ⁴ The Hearings, Appeals and Litigation Law Manual (HALLEX), section I-3-4-4 titled
22 “Party Who Requested Review Dies,” cited by plaintiff, merely provides that, where a claimant
who requested review dies, the Appeals Council may not dismiss the request for review where
there is an IAR in effect. It does not provide that the State has a right to request review.

01 Effect of IAR/Standing

02 20 C.F.R. § 416.1906(b) specifies that an IAR remains in effect until “[w]e make a final
03 determination on your claim (if your SSI claim is denied, the denial is the final determination,
04 unless you file a timely appeal as described in subpart N of this part).” The Commissioner points
05 out that the regulation defines “you” as “someone who has applied for or is already receiving SSI
06 benefits.” 20 C.F.R. § 416.1902. The Commissioner argues that, since Ms. Parker could not
07 appeal the ALJ’s decision, the ALJ’s decision was the final determination and the IAR was,
08 therefore, no longer in effect. The State argues that this regulation does not apply because there
09 was no final determination on this claim until the Appeals Council improperly dismissed its request
10 for review.

11 The State’s argument fails. 20 C.F.R. § 416.1906 contains the definition of “final
12 determination” within the provision: “(if your SSI claim is denied, the denial is the final
13 determination, unless you file a timely appeal as described in subpart N of this part).” Subpart N
14 includes all levels of administrative and judicial appeals in a SSI claim. See 20 C.F.R. §§
15 416.1400-1499. Therefore, if the claimant fails to appeal the denial at any level, the denial is the
16 final determination. Since the IAR expired upon the issuance of the final determination, the State
17 has no interest for the law to protect and, therefore, has no standing.

18 Colorable Constitutional Claims

19 Finally, the State argues against the Commissioner’s contention that the Appeals Council’s
20 dismissal is binding and not subject to further review. While acknowledging that an Appeals
21 Council’s dismissal of a request for review based on untimely appeal is not subject to judicial
22 review, see *O’Connell v. Chater*, 958 F. Supp. 466, 468 (C.D. Cal. 1996), the State points out

01 that, here, the Appeals Council dismissed the State's request for review on the ground that it has
02 no right to request review. The State contends that such dismissal raises colorable constitutional
03 claims of deprivation of equal protection and denial of due process under the law. The State notes
04 that the Court has jurisdiction to review the Commissioner's discretionary determinations if a
05 plaintiff presents a "colorable constitutional claim of [a] due process violation that implicates a due
06 process right either to a meaningful opportunity to be heard or to seek reconsideration of an
07 adverse benefits determination." *Evans v. Chater*, 110 F.3d 1480, 1483 (9th Cir. 1997).

08 The State does not have a valid constitutional claim. As the Commissioner points out,
09 since the State has no interest for the law to protect, there has been no denial of due process or
10 equal protection rights. As such, this argument also lacks merit.

11 **CONCLUSION**

12 For the reasons set forth above, defendant's motion to dismiss should be granted and this
13 case dismissed with prejudice.

14 DATED this 25th day of July, 2007.

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16 Mary Alice Theiler
17 United States Magistrate Judge
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